

JUDGE CROTTY**06 CV****463**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CORBIS CORPORATION,

X

____ Civ. ____ ()

:

Plaintiff,

:

-against-

:

1st MEDICAL NETWORK, LLC,

:

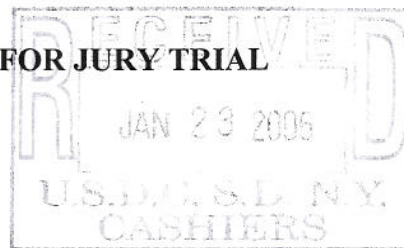
Defendant.

:

X

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT AND VIOLATION
OF THE DIGITAL MILLENNIUM
COPYRIGHT ACT**

DEMAND FOR JURY TRIAL



Plaintiff Corbis Corporation ("Corbis"), through its attorneys, complaining of 1st Medical Network, LLC ("1st Medical Network") alleges as follows:

INTRODUCTION

1. Corbis is a leading visual-solutions provider, licensing images that enable publishers, advertising and design agencies, filmmakers, and other creative professionals to tell their stories with impact extending beyond words. 1st Medical Network has misappropriated at least thirteen images from Corbis' collections, using them in forty-two instances without license or permission—contrary to the rights of Corbis and of the photographers that Corbis represents. 1st Medical Network continued to reproduce, display, transmit, and otherwise misuse such images—in pursuit of profit—on its web site even after Corbis demanded that all such wrongful action immediately cease. Because 1st Medical Network has failed to respond to Corbis' good-faith demand, it has rendered futile the possibility of resolution without litigation. Corbis thus files this action to obtain redress for 1st Medical Network's unlawful acts, bringing claims for (i)

copyright infringement under 17 U.S.C. § 501, *et seq.* and (ii) violation of the Digital Millennium Copyright Act (“DMCA”) under 17 U.S.C. § 1201 *et seq.*

JURISDICTION AND VENUE

2. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C., §§ 1331 (federal question) and 1338 (copyright), as this action involves claims brought under federal law and the United States Copyright Act, 17 U.S.C. §§ 101 *et seq.* 1st Medical Network is subject to personal jurisdiction in this Court under the valid and binding forum-selection clause in Corbis’ Site Usage Agreement and the Corbis Content License Agreement, under which 1st Medical Network and/or its agent(s) agreed to accept the exclusive jurisdiction of this Court as quoted below.

3. Venue in this Court is proper under the valid and binding forum selection clause in Corbis’ Site Usage Agreement and the Corbis Content License Agreement, under which 1st Medical Network and/or its agent(s) agreed to accept the exclusive jurisdiction of this Court as quoted below.

PARTIES

4. Corbis is a Washington corporation with a principal place of business at 710 2nd Avenue, Suite 200, Seattle Washington. Corbis’ New York office is located at 902 Broadway, New York, NY.

5. Upon information and belief, 1st Medical Network, LLC (“1st Medical Network”) is a Georgia limited liability company with a principal place of business at 1899 Powers Ferry Road, Suite 400, Atlanta, Georgia and is the largest Preferred Provider Organization in the state of Georgia.

BACKGROUND

6. Corbis is in the business of licensing photographs and fine art images on behalf of itself and the photographers and other licensors it represents. Generally, the images in Corbis' collections were taken by professional photographers who earn most or all of their livelihoods from the licensing fees Corbis is able to obtain for their images. Corbis' collections highlight well-known photographers and some of the most recognized images in contemporary society.

7. The images in Corbis' collections are the subject of copyright protection under the laws of the United States. Corbis has protected the images in its collections and the images which are the subject of this action by systematically registering the copyrights thereto.

8. Access to Corbis' web site is governed by Corbis' Site Usage Agreement available to all visitors on the www.corbis.com site. The Site Usage Agreement states in relevant part, "[a]ny dispute regarding this Agreement shall be governed by the laws of the State of New York and applicable U.S. Federal law, including Title 17 of the U.S. Code, as amended. The parties agree to accept the exclusive jurisdiction of the state and federal courts located in New York, USA."

9. Use of Corbis' images is governed by the Corbis Content Licensing Agreement available to all visitors on the www.corbis.com site. Paragraph 21 of the Corbis Content License Agreement expressly provides that "Any dispute regarding this Agreement shall be governed by the laws of the State of New York, and by Titles 15, 17 and 35 of the U.S.C., as amended, and the parties agree to accept the exclusive jurisdiction of the state and federal courts located in New York, New York, regardless of conflicts of laws."

10. Upon information and belief, at least as of October 9, 2003, and potentially on various occasions, 1st Medical Network and/or its agent(s) visited Corbis' web site and viewed the Corbis images. Thereafter, without authorization, 1st Medical Network and/or its agent(s) downloaded or copied Corbis images that had previously been registered by the United States Copyright Office.

11. 1st Medical Network and/or its agent(s) then uploaded these same images, without authorization from Corbis, to the <http://www.1stmn.com> web site for display and redistribution as part of the marketing and advertising material presented on that site in order to attract business to 1st Medical Network without paying any license fee or otherwise obtaining authorization from Corbis for this illicit use.

12. The same images remained on display and were distributed through the www.1stmn.com web site until December 8, 2005 for ten days even after 1st Medical Network received particularized notice of infringement from Corbis.

13. Attached as Exhibit A are true and correct copies of the Corbis images previously registered with the Copyright Office, with screen shots taken from the www.1stmn.com web site depicting the images from Corbis' collections that were used by 1st Medical Network without authorization and displayed on the www.1stmn.com web site.

14. At all relevant times hereto, 1st Medical Network displayed, reproduced, and distributed these copyrighted images on the www.1stmn.com web site without license or other authorization from Corbis.

15. Attached hereto as Exhibit B is a chart identifying the United States Copyright Office registration certificate numbers and registration dates for the Corbis Images displayed in

Exhibit A, evidencing that Corbis owns or controls the registered copyrights to these images that were displayed on the www.1stmn.com web site.

FIRST CLAIM FOR RELIEF - COPYRIGHT INFRINGEMENT

16. Corbis repeats and realleges the allegations of Paragraphs 1 through 15 as if fully set forth herein.

17. Corbis holds valid and exclusive registered copyrights to the images that are the subject of this action and that are evidenced by the copyright registration certificates referenced by Exhibit B.

18. 1st Medical Network reproduced, distributed, displayed, transmitted, and created derivative works of those images without Corbis' authorization.

19. The actions and conduct of 1st Medical Network infringe on the exclusive rights of Corbis granted by the Copyright Act, 17 U.S.C. § 106, to display, reproduce, and distribute the registered copyright works to the public.

20. Such actions and conduct by 1st Medical Network and/or its agent(s) constitute direct and vicarious copyright infringement under the Copyright Act, 17 U.S.C. § 501.

21. As a result of the copyright infringement described above, Corbis is entitled to relief including, but not limited to, injunctive relief, actual or statutory damages, statutory costs and attorneys' fees, and prejudgment interest.

SECOND CLAIM FOR RELIEF- DMCA VIOLATION

22. Corbis repeats and realleges the allegations of Paragraphs 1 through 21 as if fully set forth herein.

23. All of the images that are the subject of this lawsuit were displayed on the www.corbis.com web site with corresponding copyright management information ("CMI").

Upon information and belief, when 1st Medical Network and/or its agent(s) duplicated and displayed the subject images on the www.1stmn.com web site, they removed the CMI from each of the original Corbis images used by 1st Medical Network. The removal of the CMI from each of these images to induce, enable, facilitate or conceal 1st Medical Network's infringement of those images, as described above, constitutes a violation of the Digital Millennium Copyright Act, 17 U.S.C. § 1202(b).

24. As a result of the conduct described above, Corbis is entitled to relief including, without limitation, injunctive relief, actual or statutory damages, statutory costs and attorneys' fees, and prejudgment interest.

RELIEF REQUESTED

WHEREFORE, Corbis prays for relief as follows:

1. For an order permanently enjoining 1st Medical Network from infringing Corbis' copyrighted images pursuant to the Copyright Act, 17 U.S.C. § 502, and permanently enjoining 1st Medical Network from displaying Corbis' copyrighted images pursuant to the DMCA, 17 U.S.C. § 1203(b);
2. For an award of 1st Medical Network's profits and for damages in such amount as may be found, or for statutory damages of (a) not less than \$750 or more than \$30,000 per image pursuant to 17 U.S.C. § 504(c)(1) or, upon a finding of willful infringement pursuant to 17 U.S.C. § 504(c)(2), up to \$150,000 per image;
3. For an award of 1st Medical Network's profits and for damages in such amount as may be found, or for statutory damages of not less than \$2500 or more than \$25,000 per violation pursuant to 17 U.S.C. § 1203 (c)(3)(B);
4. For an award of costs, pursuant to 17 U.S.C., §§ 505 and 1203(b)(4);

5. For an award of reasonable attorneys' fees, pursuant to 17 U.S.C., §§ 505 and 1203(b)(5);
6. For an award of prejudgment interest on the amount of any award to Corbis; and
7. For such other and further relief as the Court deems just and equitable.

San Francisco, California.
January 19, 2006

Respectfully submitted,

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EXHIBIT A



NT5469724 RM | © Jose Luis Pelaez, Inc./CORBIS

IMAGE URL <http://www.1stmn.com/img/NT5469724.jpg>

Page URL http://www.1stmn.com/service_standards.asp

Service Standards: The Healthcare Network of Georgia - Microsoft Internet Explorer provided by Corbis Corporation

File Edit View Favorites Tools Help

Back Forward Stop Home Search Favorites Media TV

Address http://www.1stmn.com/service_standards.asp Go Links

Digimarc Watermarks Not Detected Options Help


Google Search News 51 blocked Check AutoLink Options

Home > For Clients > Service Standards

Service Standards

1st Medical Network (1st MN) has established certain internal standards to further ensure that we are providing our clients with the highest level of service possible.

On a quarterly basis, we track and monitor our performance to see how well we are performing as a company. We analyze the results and use the information to improve upon our current processes and to evaluate how effective we are in servicing our clients.



1st MN Service Standards

Click on the highlighted links below to view information.

- Telephone Access** - To ensure that you have timely access to 1st MN for questions about the network and services we provide
- Appointment Access** - To ensure that our eligible members have timely access to our network for medical appointments
- Provider Access** - To ensure that we have an adequate number and specialty mix of providers to care

URAC

Internet



CSM001279 | RM | © Lucidio Studio Inc./CORBIS

IMAGE URL <http://www.1stmn.com/img/CSM001279.jpg>

Page URL http://www.1stmn.com/nominate_a_provider.asp

Nominate a Provider: The Healthcare Network of Georgia - Microsoft Internet Explorer provided by Corbis Corporation

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites Media

Address http://www.1stmn.com/nominate_a_provider.asp Go Links

Digimarc Watermarks Not Detected Options Help

Google Search New! 51 blocked ABC Check AutoLink Options

NAVIGATION


- Directory Search
- Patient Bill of Rights
- Nominate a Provider
- Provider Application Request Form

Nominate a Provider

Provider Nomination Process:

If you have a provider that you would like to see added to 1st Medical Network, please follow the link to print an application request form.

- Please print the Provider Application Request Form and share it with your provider.
- If your physician is interested in joining the network, he/she must complete the information and return the form to 1st Medical Network via fax.
- Please note that completion of this form will not result in automatic inclusion in the network.
- The provider must meet certain criteria and agree to accept our fee schedule before he or she is eligible for the recruitment process review.
- The provider must also be credentialed by the network before he or she can see 1st MN members.
- Note:** The credentialing process takes approximately 60-90 days to complete from receipt of a completed application (including all requested documents).



URAC
ACCREDITED
HEALTH NETWORK

Internet